

## **APPENDIX D**

### **MODEL LEASE**

#### **INTRODUCTION**

This LEASE, made by and between the United States of America, acting through the Regional Director, Southeast Regional Office, National Park Service, hereafter referred to as the "Director" and \_\_\_\_\_ hereinafter referred to as the "Lessee":

#### **WITNESSETH:**

That the Director, for the consideration hereinafter set forth, hereby leases to the Lessee, for a term of \_\_\_\_\_ years beginning on \_\_\_\_\_ and ending on \_\_\_\_\_, the following described property together with the buildings and improvements now located thereon as well as all improvements hereafter constructed in accordance with the provisions hereof (the land, buildings and improvements are hereinafter collectively referred to as "the Premises"). See Exhibit (A) attached hereto and made a part hereof.

#### **CONDITIONS**

THIS LEASE is granted subject to the following conditions:

1. The Lessee shall pay to the United States rental in the amount of \_\_\_\_\_ and no Cents (\$ \_\_\_\_\_) per annum, payable monthly/quarterly/annually and due on the first day of each M/Q/Y in the amount of \_\_\_\_\_ and no Cents (\$ \_\_\_\_\_). At the end of the fifth year of the lease the rental rates will be readjusted at a rate equal to the average of the percentage change of the "Consumer Price Index for all Urban Consumers, U.S. City Average, All Items, (1967=100)" published by the U.S. Department of Labor, Bureau of Labor Statistics. The rental rates will be readjusted at the end of the 5th year of the lease based on a market rent study. The procedure will continue every subsequent 5 years over the term of the lease. The Lessee shall also pay to the United States on demand any sum which may have to be expended after the expiration, revocation, or termination of this lease in returning the premises to the condition required by Condition No. 18 hereof. Compensation shall be made payable to the National Park Service and forwarded by the Lessee directly to the Superintendent, Cumberland Island National Seashore. Rental shall be paid monthly and due on the first day of each month. Rental payments made after this date shall be considered late and a penalty charge of Fifty Dollars and No Cents (\$50) will be assessed as of the second day of the month.

Amortizing Expenditures: The amounts expended by the Lessee for initial capital improvements (excluding any interest costs incurred) to the leasehold shall be amortized and offset against the rent due the United States on a monthly basis at Dollars and No Cents (\$ ) per month commencing with the effective date of the lease and continuing until such time as all expenditures have been so amortized. Initial capital improvements are defined as permanent improvements which are part of the initial rehabilitation made in accordance with Exhibit C, but excluding routine maintenance. Also, major preservation maintenance costs such as for periodic painting and roofing and the replacement of major appliances and mechanical systems will be amortized in the same manner. Any special maintenance prescribed by the Historic Structures Preservation Guide (Section of this lease) may also be amortized for the duration of the lease. Lessee shall keep records of capital improvement expenditures and prescribed special maintenance in accordance with accepted accounting practices and provide records to the Superintendent on a yearly basis as evidence of his amortization schedule.

The NPS may terminate the lease at any time for a willful or negligent breach of lease terms or for repeated violations of regulations. The Superintendent shall provide a notice of proposed lease termination to the Lessee. This notice shall provide the Lessee with specific instances of breach or regulation violation. The Lessee will have a period of thirty days to cure the breach or violation. At the conclusion of the thirty-day cure period, the Superintendent shall determine whether the breach or regulation violation has been cured. If so, the Lessee shall be notified. If not, a notice of final termination shall be transmitted to the Lessee. The Lessee may appeal the termination notice to the Regional Director within fifteen days of receipt, stating with specificity the reasons for the appeal. The Lessee may request an opportunity to make an oral presentation to the Regional Director. The Regional Director shall forthwith render a decision on the appeal. This decision shall constitute the final agency decision of the NPS. During the pendency of the appeal, the termination of the lease shall be suspended.

In the event the lease is terminated for cause as set forth in paragraph \_\_, the Lessee shall not be entitled to claim compensation for special maintenance and capital improvement expenditures that have not been amortized as rent. Those unamortized expenditures shall be deemed forfeited to the United States as a penalty for breach of the lease. In the event the lease is terminated for the convenience of the NPS, Lessee shall have the opportunity to make a claim against the NPS for all unamortized expenditures. Upon receipt of such a claim, the Superintendent shall make a determination of the proper amount of the claim, if any. The NPS shall use its best efforts to secure an appropriation to pay that amount. However, nothing in this agreement may be construed as an enforceable obligation to pay the claim in violation of the terms of the Anti-Deficiency Act, 31 U.S.C. § 1341. The Superintendent's determination of the claim may be appealed within fifteen days of its receipt to the Regional Director. The appeal procedures shall be identical to those utilized in the case of a lease termination for cause set forth in paragraph \_\_.

In the event legal action is necessitated regarding the compensation, or any other provision of this lease, if the United States is determined by a Federal District Court to be the prevailing party in said action, then it shall be reimbursed reasonable attorney's fees and court costs incurred to the extent the Court determines appropriate. If the Lessee is determined by a Federal District Court to be the prevailing party as defined by the Equal Access to Justice Act, then it shall be reimbursed

reasonable attorney's fees and costs to the extent that the Court determines appropriate applying the Equal Access to Justice Act.

2. As of the commencement date of this lease, an inventory and condition report of all personal property and improvements of the Government included in this lease shall be made by a representative of the Director and a representative of the Lessee to reflect the then present condition of said property. A copy of said inventory and condition report shall be attached hereto and become a part hereof, as fully as if originally incorporated herein. At the expiration, revocation, or termination of this lease a similar inventory and condition report shall be prepared and submitted to the Director, said inventory and condition report to constitute the basis for settlement by the Lessee with the Director for leased property shown to be lost, damaged, or destroyed, any such property to be either replaced or returned to the condition required by Condition No. 18 hereof, normal wear and tear excepted, or at the election of the Director, reimbursement made therefor by the Lessee at the then current market value thereof.

3. That the Lessee has inspected and knows the condition of the leased property, and it is understood that the same is hereby leased without any representation or warranty by the Director whatsoever, and without obligation on the part of the Director to make any alterations, repairs or additions thereto.

4. That all portions of the leased property shall at all times be protected and maintained in good order and condition by and at the expense of the Lessee as noted in the attached Historic Structure Preservation Guide, Cumberland Island, Volumes I and II.

5. That the Lessee shall neither transfer nor assign this lease or any property on the leased premises, nor sublet the leased premises or any part thereof or any property thereon, nor grant any interest, privilege or license whatsoever, in connection with this lease without permission in writing from the Director.

6. That the right is hereby reserved to the United States, its officers, agents, and employees to enter upon the said premises at any time upon reasonable notice given for the purpose of inspection and inventory and when otherwise deemed necessary for the protection of the interests of the Government, and the Lessee shall have no claim of any character on account thereof against the United States or any officer, agent, or employee thereof.

7. That the United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the use and occupation of the said premises, or for injuries to the person of the Lessee (if an individual), or for damages to the property or injuries to the persons of the Lessee's officers, agents, servants, or employees, or others who may be on said premises at their invitation or the invitation of any one of them, arising from governmental activities. The Lessee shall save and hold the United States harmless from any and all such claims.

8. That the Lessee shall at all times exercise due diligence in the protection of the leased premises against damage or destruction by fire and other causes.

9. That any property of the United States damaged or destroyed by the Lessee incident to the Lessee's use and occupation of the said property shall be promptly restored or reconstructed by the Lessee to the satisfaction of the Director, or in lieu of such rehabilitation or reconstruction, the Lessee shall, if so required by said Director, pay to the United States money in an amount sufficient to compensate the loss sustained by the United States by reason of damages to or destruction of Government property.

10. That the Lessee shall cut no timber, conduct no mining operation, remove no sand, gravel or kindred substances from the ground, except in the exercise of mineral rights heretofore reserved to the record owner thereof, commit no waste of any kind, or in any manner substantially change the contour or condition of the property hereby leased, except changes required in carrying out soil and water conservation measures.

11. That the Lessee shall comply with all applicable laws, ordinances, and regulations of the State, county, and municipality wherein the said demised premises are located, with regard to construction, sanitation, licenses, or permits to do business, and all other matters.

12. That the Lessee shall not construct any permanent structure on the said premises, and shall not construct any temporary structure or advertising sign thereon without the prior written consent of the Director.

13. That the Lessee shall pay to the proper authority, when and as the same becomes due and payable, all taxes, assessments, and similar charges, which at any time during the term of this lease, may be taxed, assessed or imposed upon the Government or upon the Lessee with respect to or upon the leased premises.

14. That the use and occupation of the premises leased hereby shall be subject to the general supervision and approval of the Director and to such rules and regulations regarding ingress, egress, safety, sanitation, and security as may be prescribed by him/her from time to time.

15. That the Lessee shall pay the cost, as determined by the Director, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the Lessee, including the Lessee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced and supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the method prescribed by the Director upon bills rendered monthly.

16. That for such period as the Lessee is in possession of the leased property pursuant to the provisions and conditions of this lease, the Lessee shall procure and maintain at its cost a standard fire and extended coverage insurance policy or policies on the leased property to the full replacement value thereof. The Lessee shall procure such insurance from any responsible company or companies, and furnish either the original policy or policies or certificate of insurance or certificates of insurance to the Director. The policy or policies evidencing such insurance shall provide that in the event of loss thereunder the proceeds of the policy or policies shall be payable to the Lessee to be used solely for the rehabilitation or reconstruction of the property damaged or

destroyed, with any balance of the proceeds not required for the rehabilitation or reconstruction of the property damaged or destroyed to be paid to the Government; provided, however, that the insurer, after payment of any proceeds to the Lessee in accordance with the provisions of the policy or policies shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the Government to restore or reconstruct the leased property or any part thereof.

17. That no Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefit to arise therefrom. Nothing, however, herein contained shall be construed to extend to any incorporated company, if the lease be for the general benefit of such corporation or company.

18. That on or before the date of expiration of this lease, or upon its revocation by the Director, the Lessee shall vacate the demised premises, remove the property of the Lessee therefrom, and return the premises and personal property to as good order and condition as that existing upon the date of commencement of the term of this lease, damages beyond control of the Lessee and due to fair wear and tear excepted. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom, and return the premises to the condition aforesaid within such time as the Director may designate. In any case, if the Lessee shall fail or neglect to remove said property and so repair the premises, then, at the option of the Director, said property shall either become the property of the United States without compensation therefor, or the Director may cause it to be removed and the premises to be repaired at the expense of the Lessee, and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and repair work.

19. The NPS may terminate the lease for its convenience with no required showing of cause. The termination shall be effective on the date set forth in a notice to the Lessee.

20. That if more than one Lessee is named in this lease, the obligations of said Lessees herein contained shall be joint and several obligations.

21. That except as otherwise specifically provided, any reference herein to the Director shall include his/her duly appointed successors and his/her authorized representative.

22. That all notices to be given pursuant to this lease shall be addressed, if to the Lessee to:

if to the Director to:

or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper, addressed as aforesaid and deposited postage prepaid (or, if mailed by the Director, deposited under the government franking privilege) in a post office or branch post office regularly maintained by the United States Postal Service.

23. The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

24. The Lessee shall comply with the requirements of (a) Title VII of the Civil Rights Act of 1964, as well as Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967; (b) Title V, Section 503 of the Rehabilitation Act of September 26, 1973, P.L. 93-112, which requires Government Contractors and Subcontractors to take Affirmative Action to employ and to advance in employment qualified handicapped individuals, 41 CFR 60-2 which prescribes affirmative action requirements for contractors and subcontractors, the Age Discrimination in Employment Act of December 15, 1967, as amended by P.L. 95-256 of April 6, 1978, and with regulations heretofore or hereafter promulgated, relating to nondiscrimination in employment and in providing facilities and services to the public and shall do nothing in advertising for employees which will prevent those covered by these laws from qualifying for such employment.

25. That prior to the execution of this lease conditions were deleted, revised, and added in the following manner:

- Specify permitted and/or non-permitted uses.
- Specify preservation maintenance as described in the Historic Structure Preservation Guide, Cumberland Island, Volumes I and II.
- Other

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be signed in person, or by a person duly authorized, as of the day and year first written above.

United States of America  
Acting through the  
Director, National Park Service  
U.S. Department of the Interior

\_\_\_\_\_ By: \_\_\_\_\_ Regional Director  
Southeast Regional Office

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LESSEE

Witness                      NAME

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Witness                      NAME OF OTHER LESSEE

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This \_\_\_ day of \_\_\_\_\_, \_\_\_, before me personally appeared NAME, who did depose and say that he is the Regional Director, Southeast Regional Office, National Park Service, and was duly authorized to execute the foregoing instrument and in the name of the United States Department of the Interior, National Park Service, and acknowledged that he had so signed, executed, and delivered said Lease for the consideration, uses, and purposes therein mentioned and set forth and acknowledged it to be his free act and deed before me.

Notary Public  
My Commission Expires

This \_\_\_ day of \_\_\_\_\_, \_\_\_, before me personally appeared NAME OF LESSEE and NAMES OF OTHER LESSEE(S), who did depose and say that they were dully authorized to execute the foregoing instrument, and acknowledged that they had so signed, executed, and delivered said Lease for the consideration, uses, and purposes therein mentioned and set forth and acknowledged it to be their free act and deed before me.

Notary Public  
My Commission Expires

This lease was prepared by the National Park Service, Southeast Regional Office, Atlanta Federal Center, 1924 Building, 100 Alabama Street, S.W., Atlanta, Georgia 30303.